

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRYAN BOOREN and SHARIN  
METCALF,

Plaintiffs,

v.

MB LAW GROUP, LLP; MICHAEL J.  
FARRELL; DAVID CRAMER;  
ZEIVE, BRODNAX & STEELE, LLP;  
KINGSTON D. BOWEN; SCOTT D.  
CRAWFORD; U.S. BANK, NA;  
TRUMAN 2016 SC 6 TITLE TRUST;  
AELP SECURITIZATION TRUST  
SERIES 2015-1; WILMINGTON  
SAVINGS FUND SOCIETY FSB;  
FNMA REMIC 2006-17 TRUST;  
FANNIE MAE; FAY SERVICING,  
LLC; RUSHMORE LOAN  
MANAGEMENT SERVICES;  
MERSCORP HOLDINGS, INC.; and  
MERS;

Defendants.

CASE NO. 3:20-cv-06163-RJB

ORDER GRANTING  
DEFENDANTS' MOTIONS TO  
DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION

This matter comes before the Court on Defendants Fannie Mae and FNMA REMIC  
2006-17 Trust's Motion to Dismiss (Dkt. 54); Defendants Zieve, Brodnax, & Steele, LLP, NKA

1 Law, LLP, Kingston D. Bowen, and Scott D. Crawford’s Motion to Dismiss (Dkt. 57);  
2 Defendants MB Law Group, LLP, Michael Farrell and David Cramer’s Motion to Dismiss (Dkt.  
3 60); and Defendants U.S. Bank, Rushmore, and Fay’s Motion to Dismiss (Dkt. 70).

4 With these motions, all defendants except for Wilmington Savings Fund Society and  
5 AELP Securitization Trust Series 2015-1 move to dismiss Plaintiffs’ second amended complaint.

6 The Court has considered the pleadings filed in support of and in opposition to the  
7 motions and the file herein.

8 **I. FACTS AND PROCEDURAL HISTORY**

9 **A. FACTS**

10 This matter arises out of a loan and subsequent judicial foreclosure issued by the  
11 Washington State Superior Court, Clallam County (“State Action”), *US Bank Nat’l Ass’n as*  
12 *Legal Title Trustee for Truman 2016 SC6 Title Trust v. Sharin R. Metcalf, et al.*, Clallam County  
13 Superior Ct. Case No. 19-2-00509-05. Dkt. 70 at 3.

14 On or about January 9, 2006, Plaintiff Sharin Metcalf executed a deed of trust to secure a  
15 loan (“the Loan”). Dkt. 45. Plaintiff Bryan Booren is Sharin Metcalf’s son. *Id.*

16 Plaintiffs allegedly stopped making payments on the Loan in 2009. Dkt. 57. In 2019,  
17 Defendant US Bank National Associate as Legal Title Trustee for Truman 2016 SC6 Title Trust  
18 (“US Bank”) initiated judicial foreclosure proceedings in the State Action. Dkt. 70 at 3.

19 Plaintiffs answered the complaint in the State Action and US Bank moved for summary  
20 judgment (Dkt. 55-4), which Plaintiffs opposed (Dkt. 55-5). On November 20, 2020, the  
21 Clallam County court granted US Bank’s motion for summary judgment. The same day, Booren  
22 filed a Notice of Appeal to the Washington State Court of Appeals, Division II. Dkt. 55-7.

23 On November 30, 2020, Plaintiffs filed their initial complaint in this matter. Dkt. 1.  
24

On January 22, 2021, the superior court in the State Action entered Judgment and Decree of Foreclosure against Plaintiff Booren.

### **B. PROCEDURAL HISTORY AND PENDING MOTIONS**

Plaintiffs bring sixteen causes of action: violation of the federal Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1962(a)–(d); civil conspiracy to defraud; violation of the Fair Debt Collection Practices Act, 18 U.S.C. § 1692; violation of the Washington Fair Debt Collection Practices Act, RCW 19.16.100; unfair business practices pursuant to RCW 19.86; abuse of vulnerable adults pursuant to RCW 74.34; wrongful foreclosure; slander of title; violation of the Washington Consumer Protection Act, RCW 19.86; Quiet Title, RCW 7.28.010; slander of credit; infliction of emotional distress, and; declaratory and equitable relief. Dkt. 45.

In the pending four motions to dismiss, all defendants except for Wilmington Savings Fund Society and AELP Securitization Trust Series 2015-1, which have yet to file a notice of appearance, move to dismiss Plaintiffs’ complaint. Though there are four separate motions to dismiss, Defendants joined in the motions filed by other Defendants, and all motions move to dismiss for lack of subject matter jurisdiction.

On February 9, 2021, Plaintiff Bryan Booren filed a response ostensibly in opposition to the first two motions to dismiss (Dkts. 54 and 57)<sup>1</sup>, but which does not address the arguments made in the motions. Dkt. 69.

On February 11, 2021, the Court revoked Plaintiffs’ electronic filing privileges because a disbarred California attorney appeared to be using the electronic filing system to file motions on their behalf. Dkt. 75. The order permitted Plaintiffs to make a new application for use of the

---

<sup>1</sup> Plaintiff Booren filed this motion as a response to Dkt. 54, but it includes reference to Dkt. 57.

1 electronic filing system but neither did so. That order and subsequent filings have been sent to  
2 Plaintiffs' last known address.

3 Plaintiffs have not responded to the second two pending motions to dismiss, filed on  
4 February 1 and February 10 respectively.

5 In addition, it is worth noting that this case has a long procedural history not relevant to  
6 this order. *See e.g.*, Dkts. 11, 34, 49, 50, 74, and 75.

## 7 **II. DISCUSSION**

### 8 **A. SUBJECT MATTER JURISDICTION**

9 Federal courts are courts of limited jurisdiction that only have authority to hear cases  
10 when authorized by the Constitution or statutory grant. *Kokkonen v. Guardian Life Ins. Co.*, 511  
11 U.S. 375, 377 (1994). The party asserting jurisdiction has the burden of establishing federal  
12 court jurisdiction. *Id.*

13 Pursuant to Fed. R. Civ. P. 12(b)(1), a party may move to dismiss for lack of subject-  
14 matter jurisdiction. When a party challenging subject-matter jurisdiction moves to dismiss on  
15 multiple grounds, the jurisdictional question must be addressed before any other arguments for  
16 dismissal. *See Bell v. Hood*, 327 U.S. 678, 682 (1946). A federal court must dismiss a suit if it  
17 lacks subject-matter jurisdiction. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006) (quoting  
18 Fed. R. Civ. P. 12(h)(3)).

### 19 **B. *ROOKER-FELDMAN* DOCTRINE**

20 Pursuant to the *Rooker-Feldman* doctrine, named for *Rooker v. Fidelity Trust Co.*, 263  
21 U.S. 413 (1923) and *Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983), federal  
22 district courts lack subject-matter jurisdiction to hear direct or *de facto* appeals of state court  
23 judgments. *Fowler v. Guerin*, 899 F.3d 1112, 1119 (2018). While the doctrine is "narrow," the  
24

1 claims need not be identical to be considered a *de facto* appeal. *Cooper v. Ramos*, 704 F.3d 772,  
2 778 (9th Cir. 2012). Instead, federal courts consider whether the federal claim is “inextricably  
3 intertwined” with the merits of a state court judgment. *Id.* at 779.

4 To determine whether a federal claim is inextricably intertwined with the merits of a state  
5 court judgment, courts pay special attention to the relief requested and consider whether “the  
6 relief requested in the federal action would effectively reverse the state court decision or void its  
7 ruling.” *Fontana Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987, 992 (9th Cir. 2002).

8 While the doctrine does not prevent a plaintiff from bringing an independent but related claim,  
9 like for example challenging the constitutionality of a statute at issue in the state matter, *see*  
10 *Feldman*, 460 U.S. 462, it does deprive federal courts of jurisdiction to the extent that the federal  
11 claims assert that state court wrongly decided the issues before it. *Cooper*, 704 F.3d at 779  
12 (finding conspiracy claims inextricably intertwined with underlying state action for murder)  
13 (quoting *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987)).

14 At least thirteen of Plaintiffs’ claims seek to void or reverse the State Action. Five of the  
15 sixteen claims are for conspiracy. Plaintiffs claim Defendants’ conspiracy “subjected [them] to  
16 wrongful loan collection and wrongful foreclosure proceedings.” Dkt. 45 at 28, 29, 30, and 31.  
17 Similarly, Plaintiffs’ claims for unfair collection practice and business practices allege that those  
18 practices subjected Plaintiffs to “unfair” or “unlawful” attempts to collect on the loan. *Id.* at 33  
19 and 34. For relief, Plaintiffs seeks an injunction to prevent foreclosure or eviction and a  
20 declaration that “Plaintiff Booren holds title free and clear of the Trust Deed and any and all  
21 assignments recorded on or after January 09, 2006, are null and void and of no force and effect  
22 and do not constitute a lien or encumbrance on the Property,” in addition to various forms of  
23 monetary damages. *Id.* at 37–38.

1 In sum, Plaintiffs claim Defendants did something to make the loan and foreclosure  
2 proceedings illegitimate and, therefore, the State Action was wrongly decided and should be  
3 reversed.

4 To the extent that Plaintiffs' claims for slander of title, slander of credit, and infliction of  
5 emotional distress are not barred by *Rooker-Feldman*, they are barred by *res judicata*, which bars  
6 re-litigation of claims that were or could have been raised in a previous action. *See Williams v.*  
7 *Leone & Keeble, Inc.*, 171 Wn.2d 726, 730 (2011); *Rowland v. Baca*, Case No. 10-cv-5536, 2011  
8 WL 841275 at \*2 (N.D. Cal. 2011). Those claims could have been raised in the State Action.

9 Moreover, Defendants theories related to collateral estoppel, immunity, deficient service,  
10 and failure to identify a cognizable legal theory appear to have merit, but the Court need not  
11 consider those arguments because it lacks subject matter jurisdiction.

12 For the foregoing reasons, Defendants' motions to dismiss should be granted.

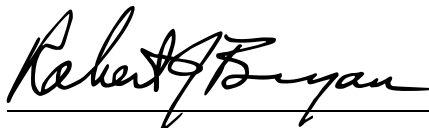
### 13 **III. ORDER**

14 Therefore, it is hereby **ORDERED** that:

- 15 • Defendants' motions to dismiss (Dkts. 54, 57, 60, and 70) **ARE GRANTED**;
- 16 • All defendants except for Wilmington Savings Fund Society and AELP  
17 Securitization Trust Series 2015-1 **ARE DISMISSED**.

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
19 to any party appearing *pro se* at said party's last known address.

20 Dated this 12<sup>th</sup> day of March, 2021.

21 

22 ROBERT J. BRYAN  
23 United States District Judge  
24